

Gardena Rubber Co., Inc. and General Warehousemen's Union, Local 598, International Brotherhood of Teamsters, AFL-CIO.
Case 21-CA-29660

February 9, 1994

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND TRUESDALE

Upon a charge filed by General Warehousemen's Union, Local 598, International Brotherhood of Teamsters, AFL-CIO (the Union), the Acting General Counsel of the National Labor Relations Board issued a complaint on October 28, 1993, against Gardena Rubber Co., Inc. (the Respondent) alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On December 13, 1993, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On December 16, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 26, 1993, notified the Respondent that unless an answer were received by "close of business on Wednesday, December 1, 1994,"¹ a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, with an office and place of business located at 155 East 157th Street, Gardena, California, has been engaged in the business of manufacturing molded rubber products and is a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business. During the 12-month period preceding issuance of the complaint, the Respondent purchased and received goods valued in excess of \$50,000 directly from points outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees, warehouse employees, including shipping and receiving clerks, and truck drivers, employed at the facility; excluding office clerical employees, laboratory employees, research and development employees, tool and die makers, guards, professional employees and supervisors as defined in the Act.

Since about 1978, the Union has been the designated exclusive collective-bargaining representative of the unit employees and since then, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 1988, to May 31, 1991. At all times since 1978, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

Since about July 18, 1991, certain employees of the Respondent represented by the Union and employed at the facility ceased work concertedly and engaged in a strike. About September 13, 1993, by letter submitted on their behalf by the Union, the employees who had engaged in the strike made unconditional offers to return to their former positions of employment. Since about September 13, 1993, the Respondent has failed and refused to reinstate the employees to their former positions of employment.

About September 29, 1993, the Union requested that the Respondent bargain collectively with the Union

¹ We assume the reference to 1994 would have been understood by the Respondent to mean 1993, especially in light of our Notice to Show Cause. In any event, we note that the courtesy letter was sent merely as a reminder and is not a requirement of the statute.

with regard to the reinstatement of the employees. Since about September 29, 1993, the Respondent has failed and refused to bargain collectively about the reinstatement of the employees. This subject relates to the wages, hours, and other terms and conditions of employment of unit employees and is a mandatory subject for the purposes of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has violated Section 8(a)(1), (3), and (5) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused to bargain with the Union regarding reinstatement of striking employees in violation of Section 8(a)(1) and (5) of the Act, we shall order it to bargain, upon request. Further, having found that the Respondent has failed and refused to reinstate striking employees in violation of Section 8(a)(1) and (3) of the Act, we shall order the Respondent to offer all employees who participated in the strike immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, dismissing, if necessary, any persons hired as replacements after the offer to return to work was made. Those strikers for whom no positions are immediately available shall be put on the preferential hiring list and shall be chosen from such list and offered reinstatement as positions become available and before other persons are hired for such work. The Respondent shall also make the striking employees whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).² The Respondent shall also be required to expunge from its files any and all references to the unlawful failures to reinstate, and to notify the strikers in writing that this has been done.

² Backpay will commence as of the date of the unconditional offer to return to work on September 13, 1993. The 5-day grace period which accommodates the interests of the employees in returning to work and the employer's need to effectuate that return in an orderly manner, is inapplicable where, as here, the Respondent has rejected, unduly delayed, or ignored the unconditional offer to return to work. See *Northern Wire Corp.* 291 NLRB 727 fn. 6 (1988).

ORDER

The National Labor Relations Board orders that the Respondent, Gardena Rubber Co., Inc., Gardena, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to offer its striking employees immediate and full reinstatement to their former jobs.

(b) Failing and refusing to bargain with the Union regarding reinstatement of striking employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union regarding reinstatement of striking employees.

(b) Offer immediate and full reinstatement to its striking employees to their former jobs, or if those jobs no longer exist, to substantially equivalent jobs without prejudice to their seniority and other rights, dismissing, if necessary, any persons hired as replacements by Respondent on or after September 13, 1993. If, after dismissal, sufficient jobs are not available for these employees, they shall be put on the preferential hiring list and shall be chosen from such list and offered employment before any other persons are hired. Make whole these employees for its failure to reinstate them by paying them the amounts they would have earned, plus interest, as set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Expunge from its records all references to its unlawful refusal to offer reinstatement to the strikers and notify them in writing that this has been done and that this will not be used against them in any way.

(e) Post at its facility in Gardena, California, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 9, 1994

James M. Stephens, Chairman

Dennis M. Devaney, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to offer reinstatement to our striking employees who have unconditionally offered to return to work.

WE WILL NOT fail and refuse to bargain with General Warehousemen's Union, Local 598, International

Brotherhood of Teamsters, AFL-CIO on behalf of the following unit of employees regarding the reinstatement of striking employees:

All production and maintenance employees, warehouse employees, including shipping and receiving clerks, and truck drivers, employed at the facility; excluding office clerical employees, laboratory employees, research and development employees, tool and die makers, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union about reinstatement of striking employees.

WE WILL offer our striking employees immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice their seniority or any other rights or privileges previously enjoyed, discharging if necessary any replacements hired after the date of their unconditional offer to return to work and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL expunge from our files all references to our failure to offer reinstatement to our striking employees and we shall notify them in writing that this has been done and that it will not be used against them in any way.

GARDENA RUBBER CO., INC.